

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN ASSEMBLY JUNE 1, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 621

Introduced by Assembly Member Roger Hernández

February 24, 2015

An act to add Section 2750.8 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 621, as amended, Roger Hernández. Drayage truck operators.

Existing law governs the relationship between an employer and an employee with regard to hiring, promotion, discipline, wages and hours, working conditions, and administrative and judicial remedies. Existing law sets forth guidelines for determining whether a person who performs work for another pursuant to a contract is an employee or an independent contractor. Existing law authorizes the Labor Commissioner to investigate employee complaints and to conduct a hearing in any action to recover wages, penalties, and other demands for compensation.

This bill would, notwithstanding any law, relieve a motor carrier performing drayage services of liability for statutory or civil penalties associated with misclassification of commercial drivers as independent contractors if the motor carrier enters into a ~~consent-decree~~ *settlement agreement* with the Labor Commissioner prior to January 1, 2017, whereby the motor carrier agrees to convert all of its commercial drivers to employees, and the ~~consent-decree~~ *settlement agreement* contains prescribed components, including, but not limited to, an agreement by the motor carrier to pay all wages, benefits, and taxes owed, if any. The

bill would permit a ~~consent-decree settlement agreement~~ to contain a provision authorizing the Labor Commissioner to recover from the carrier specified costs associated with the ~~consent-decree settlement agreement~~.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2750.8 is added to the Labor Code, to
2 read:

3 2750.8. (a) Notwithstanding any law, a motor carrier
4 performing drayage services at one or more ports in this state shall
5 be relieved of liability for statutory or civil penalties associated
6 with misclassification of commercial drivers as independent
7 contractors if the motor carrier enters into a ~~consent-decree~~
8 *settlement agreement* with the Labor Commissioner whereby the
9 motor carrier agrees to convert all of its commercial drivers to
10 employees.

11 (b) A ~~consent-decree settlement agreement~~ entered into pursuant
12 to subdivision (a) shall contain all of the following:

13 (1) An agreement by the motor carrier to pay all wages, benefits,
14 and taxes owed, if any, to or in relation to all of its converted
15 commercial drivers covering the period of time from the first date
16 of misclassification to the date the ~~consent-decree settlement~~
17 *agreement* is entered into, but not exceeding the applicable statute
18 of limitations.

19 (2) An agreement by the motor carrier to maintain any converted
20 commercial driver positions as employee positions.

21 (3) An agreement by the motor carrier that any future
22 commercial drivers hired to perform the same or similar duties as
23 those employees converted pursuant to subdivision (a) shall be
24 presumed to have employee status and that the motor carrier shall
25 have the burden to prove by clear and convincing evidence that
26 they are not employees in any administrative or judicial proceeding
27 in which their employment status is an issue.

28 (4) Any other provisions the Labor Commissioner deems
29 necessary to carry out the intent of this section or to enforce the
30 ~~provisions of the consent-decree settlement agreement~~.

1 (c) As used in this section, the following terms have the
2 following meanings:

3 (1) “Commercial driver” means a person who holds a valid
4 commercial driver’s license hired or contracted with to provide
5 port drayage services.

6 (2) “Motor carrier” means a registered owner, lessee, licensee,
7 or bailee of a commercial motor vehicle as set forth in *subdivision*
8 *(b) of Section 34500 15210* of the Vehicle Code, who operates or
9 directs the operation of any such vehicle on a for-hire or
10 not-for-hire basis to perform port drayage services.

11 (3) “Port” means any sea or river port in this state.

12 (d) ~~A consent decree settlement agreement~~ entered into pursuant
13 to subdivision (a) may contain a provision authorizing the Labor
14 Commissioner to recover from the motor carrier an amount
15 necessary to cover the Labor Commissioner’s reasonable costs
16 associated with the review, approval, and compliance with the
17 ~~consent decree settlement agreement~~.

18 (e) This section shall not apply to a motor carrier that has a
19 pending civil lawsuit against it in state or federal court alleging
20 misclassification of commercial drivers where the lawsuit was
21 filed prior to January 1, 2015.

22 (f) This section shall apply only to ~~consent decrees settlement~~
23 ~~agreements~~ entered into by the Labor Commissioner prior to
24 January 1, 2017.